



05-CV-05376-CMP

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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA  
DEPUTY

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MR. DARNELL McGARY,

Plaintiff,

vs.

MR. STEVE GREGORICH, DR. HENRY  
RICHARDS, DR. MARK McCLUNG, DR.  
LESLIE SZIEBERT, MS. VICTORIA  
ROBERTS, MS. KIM ACKER, AND MR.  
KIETH BARNES and DR. BRIAN JUDD.

Defendant(s)

CASE NO.CO5-5376RBL

**CIVIL RIGHTS COMPLAINT**

**TITLE 42 U.S.C 1981**

**TITLE 42 U.S.C 1983**

**TITLE 42 U.S.C 1985(3)**

**TITLE 42 U.S.C 1997 ET SEQ.**

**SUPPLEMENTAL AND PENDENT  
JURISDICTION UNDER 28 U.S.C  
1367(A)**

**FIRST AMENDED COMPLAINT**

**I. CIVIL RIGHTS ACTION WITH JURY DEMAND**

This is the FIRST AMENDED civil rights complaint brought by Plaintiff Darnell McGary, pro-se, who is currently housed in a Washington States Department of Social and Health Services treatment facility, pursuant to orders of detention/commitment, issued by a Washington State Superior Court, for control, care, and treatment. The aforesaid facility is located on McNeil Island, with a Washington State mainline prison facility. Plaintiff is not a prison inmate in the traditional application of the term, nor is Plaintiff serving sentences imposed by a court upon conviction of a criminal offense.

1 (1.2). At all times relevant to this complaint, the above named Defendants have acted with  
2 wanton, callous, disregard, and deliberate indifference for Plaintiffs well established fundamental  
3 constitutional rights, immunities, and privileges, and have so acted in bad faith, and have  
4 conspired to deprive Plaintiff of his rights secured under the constitution of the United States,  
5 and have done so under the color of state law pursuant to orders of detention/commitment, issued  
6 by a Washington State Superior Court, for treatment and confinement. The aforesaid facilities  
7 are (SCC) Special Commitment Center and (SCTF) Secure Community Transition facility,  
8 located in Steilacoom Washington. A Washington State Treatment facility.

9  
10 (1.3). At all times relevant to this complaint, the above named Defendants have acted with  
11 wanton, callous, disregard, and deliberate indifference for Plaintiffs well established fundamental  
12 constitutional rights, immunities, and privileges, and have so acted in bad faith, and have  
13 conspired to deprive Plaintiff of his rights secured under the constitution of the United States,  
14 and have done so under color of State law.

15  
16 (1.4). Plaintiff seeks both preliminary and permanent injunctive relief, declaratory, judgment and  
17 unspecified damages, costs and attorney fees pursuant to 42 U.S.C 1988, as set forth within  
18 section Eight of this complaint. Plaintiff also enters his demand for trial by jury.

19  
20 **II. JURISDICTION**

21 (2.1). Plaintiffs cause of action and claims for relief are filed under the authority established  
22 within Title 42 U.S.C 1981, Title 42 U.S.C 1983, Title 42 U.S.C 1985(3), and 42 U.S.C 1997 et  
23 seq., Plaintiff also seeks to invoke the Supplemental and Pendants Jurisdiction of this court,  
24 pursuant to 28 U.S.C 1376(a), regarding claims of violations of Washington Statutory law, to  
25 redress injuries suffered by Plaintiff, and deprivation of rights, privileges, and immunities under  
26 color of State law, but not limited thereto.

1 (2.2). Those rights secured under the Fourth, Fifth, Eighth, Thirteenth, and Fourteenth  
2 Amendments to the United States Constitution, but not limited thereto. Including criminal and  
3 civil conspiracy to deprive Plaintiff of Due Process and Equal Protection of the law, and privacy  
4 rights.

5  
6 (2.3). Further, this jurisdiction over each claim and the authority to grant relief as deemed  
7 appropriate to correct the various violations committed, under section II, Article III, of the  
8 United States Constitution.

9  
10 (2.4). All claims arise directly under the Fourth, Fifth, Eighth, Thirteenth, and Fourteenth  
11 Amendments of the United States Constitution an the amount in controversy exceeds seventy  
12 five thousand per each named individual as defendants.

13  
14 (2.5). Accordingly, jurisdiction of this court is invoked pursuant to 28 U.S.C 1331 and 1343(1),  
15 (3), and (4) and 28 U.S.C 2241. Additionally, Plaintiff seeks to invoke the Supplemental and  
16 Pendants Jurisdiction of this court for all violations of Washington State statutory law, and  
17 official policies, as the violations arise from the same nucleus of conduct which has violated  
18 federally protected rights of Plaintiffs, and the laws of the United States;

19  
20 (2.6). Plaintiffs First and Second claims are so related that both claims form part of the same case  
21 of controversy under Article III of the United States Constitution, as hereinafter more fully  
22 appears.

### 23 24 **III. VENUE**

25 (3.1). Pursuant to, and in accordance with 28 U.S.C 1391(a), venue is proper. Both Plaintiff and  
26 all named Defendants herein, reside within the geographical jurisdiction of the above entitled  
27 Court, coupled with all allegations of volatile conduct of Plaintiffs federally protected rights, and  
28

1 the statutory laws of the United States, and the State of Washington did so occur within the same  
2 geographical jurisdiction of this Court.

#### 3 4 **IV. PARTIES**

5 (4.1). Plaintiffs is committed to the Department of Social and Health Services pursuant to RCW  
6 71.09.025, 030, 060, and is presently confined at the Special Commitment Center.

7  
8 (4.2). Defendant Mr. Steve Gregorich is employed by the Pierce County Prosecutors office, and  
9 is responsible for prosecuting referrals under RCW 71.09, and fabricated evidence related to the  
10 RCW 71.09 proceeding, further Defendant Gregorich is continuously violating my rights under  
11 Department of Correction policy 380.370. And was aware of the conditions at the center when he  
12 filed the petition as being unconstitutional.

13  
14 (4.3). Defendant Dr. Henry Richard, is employed by the Department of Social and Health  
15 Services, and is SCC and SCTF superintendent (formerly), and is responsible for Plaintiffs care,  
16 treatment and safety. Dr. Richards is defiant in his responsibilities. Plaintiffs life is in mental and  
17 physical danger and lives on racial units, which causes him to suffer further sensory deprivation.  
18 Dr. Richards has caused Plaintiff irreparable injury. Dr. Richards issued a memorandum on July  
19 20, 2005 surrounding inappropriate behavior (homosexual) being directed toward Plaintiff but  
20 took no action.

21  
22 (4.4). Defendant(s) Dr. Mark McClung is in private practice and supervises Defendant Dr. Leslie  
23 Sziebert, both are responsible for the Plaintiffs care and treatment. Dr. Mark McClung was  
24 Plaintiffs sex offender treatment provider while at the SCTF, and was at all times responsible for  
25 Dr. Sziebert as a probationary measure during Plaintiffs care and treatment.

26  
27 (4.5). Defendant Ms. Kim Acker is employed by the Department of Corrections an is responsible  
28 for the RCW 71.09 et seq. referrals to the Prosecuting Attorney's Office, she is not a police

1 officer but a agent with good faith immunity, in which the prosecutor acts as a witness based on  
2 the referral information. Further, Ms. Acker is a member of the Resident Community Transition  
3 Team (RCTT) giving the Department of Correction full power after a inmates release and  
4 probation period has expired. See DOC 380.370

5  
6 (4.6). Defendant Ms. Victoria Roberts is employed by the Department of Corrections, and is  
7 responsible for the end of sentence review also, seeking candidates for RCW 71.09, she is also  
8 covered for good faith immunity as the prosecutor acts as a witness to and seeks certification for  
9 determination of probable cause and a arrest warrant to reconfine the individual as a SVP per  
10 RCW 71.09 at her request.

11  
12 (4.7). Defendant Mr. Keith Barnes is employed as a Pierce County Sheriff and is in charge of sex  
13 offender registration, and oversees the community transition meetings irregularly here at the  
14 SCC during the time Plaintiff was transitioning to the (LRA) less restrictive alternative, located  
15 here in Pierce County. Mr. Barnes went over conditions and arrangements at the LRA. Also, Mr.  
16 Barnes has registered Plaintiff twice once during my stay at Western State Hospital where the  
17 crime pattern was erroneous, and the second time during the transition period directly after being  
18 a (guest) at the community meeting. Mr. Barnes is responsible for notification also.

19  
20 (4.8). Defendant Dr. Brian Judd is a sex offender treatment provider and was in contact with the  
21 Plaintiff as one of his SOTP, Dr. Judd is a conspirator in this complaint and has callously  
22 violated my constitutional rights in a conspiracy to return the Plaintiff back to SCC based on  
23 erroneous information, and the revolving door policy of the RCTT he is also a member of that  
24 coalition.

25  
26 (4.9). All Defendants are sued in their personal, official and individual capacities as being  
27 responsible for the care or supervision of the Plaintiff while at the SCTF or the SCC and failed to  
28 protect the Plaintiff while having direct supervision .Defendants further placed Plaintiff in

1 potentially hazardous situations with Department of Corrections and Special Commitment Center  
2 detainees.

### 3 V. CLAIMS

4 (5.1). Plaintiff Darnell McGary, alleges that during his detention and/or confinement at the  
5 SCTF/SCC (Secure Community Transition Facility, and Special Commitment Ctr.). Defendants  
6 deprived him of his Federal constitutional and statutory rights by the conditions of his  
7 confinement, by failing the sustain an environment conducive to treatment and which would  
8 make injury by sensory deprivation unlikely and/or cause and contribute to self degeneration,  
9 using the Resident Community Transition team (RCTT hereinafter) comprised of Department of  
10 Corrections decision makers (Plaintiff cannot raise a Expost Facto concern at this time under a  
11 civil rights complaint but is raising substantive and procedural due process concerns.

12  
13 (5.2). Plaintiff Darnell McGary, alleges during his stay at the Secure Community Transition  
14 facility, where he arrived by court order on September 7, 2004, he was subject to  
15 unconstitutional conditions of confinement. Plaintiff begin looking for a job shortly upon arriving  
16 and was hired by UPS (United Parcel Service) after being turned down by several employers.  
17 however, Plaintiff was later turned down after the employer talked to a member of the transition  
18 team Mr. Dennis Pickett, and was informed of the escort procedures, and the disclosure to other  
19 employees. These procedures are a violation of equal protection of the law, since Plaintiffs  
20 history discloses only Anti-Social Personality Disorder, and for nine months Plaintiff was in  
21 another DSHS facility (Western State Hospital) without being subject of non-authentic  
22 conditions. Department of Correction Policy (380.370(IV)(A)(1),(2),(3).

23  
24 (5.3). Other employers wouldn't hire because I was ordered not to possess a driver's license, and  
25 the status of being a sexually violent predator. This paragraph hits with the same force and effect  
26 as paragraph (5.2) as fully set forth herein.  
27  
28

1 (5.4). Plaintiff Darnell McGary opened a bank account with the money he saved from working in  
2 the kitchen at the SCC (Special Commitment Center), before I came out to the SCTF (LRA). The  
3 money is now gone and I am broke due to lack of job. Plaintiff declares he has no way to support  
4 himself out at the SCTF house. Because Plaintiff suffers from Anti-Social Personality Disorder he  
5 is subject to social stigma and lifetime DOC control. Plaintiff alleges this violates Equal  
6 Protection and Due Process concerns, since forty to sixty percent of the prison (DOC) inmates  
7 release without being labeled a sexually violent predator, and suffer from this ailment.

9 (5.4). Plaintiff Darnell McGary, alleges while being escorted in the community escort staff signal  
10 patrons to watch out as Plaintiff was coming, this is not coordinated with Plaintiff and is done as  
11 they walk behind Plaintiff to his destination. Plaintiff alleges that Anti-Social Personality  
12 disorder is not a mental illness and as such should not cause Plaintiff to not be mobile in the  
13 public. Plaintiff alleges that due to the taking of prescription psychotropic medication which  
14 Western State Hospital started, Plaintiff was involuntarily taking at separate times (Trilafon),  
15 (Zyprexa), and (Risperadone) for a uncertain psychotic disorder without a Harper hearing and  
16 that he now suffers from dyskinesia a movement disturbance induced by medication.

18 (5.5). Plaintiff alleges Defendants agree that Plaintiff alleged Schizophrenia Paranoid type is the  
19 product of organic development after the age of twenty four, and not part of his ten month period  
20 in which he committed three acts involving burglary rape and robbery at age seventeen and  
21 eighteen. Therefore this disorder is not the product of any thought pattern making Plaintiff a  
22 danger to women under the SVP statute (Paragraph 5.4 incorporates with the same force and  
23 effect as set forth herein.) Plaintiff alleges that patients with Schizophrenia should be cared for in  
24 the least restrictive setting likely to be safe and to allow for effective treatment. The psychiatrist  
25 should weigh the risks and the benefits of different settings on the basis of an evaluation of the  
26 condition of the patient, the need for particular treatments, family functioning, social supports,  
27 the preferences of the patient and family, and treatment resources that are available in the  
28 community. (These two paragraphs are not barred by Heck v. Humphrey due to the fact Plaintiff

1 is not arguing the invalidity of his confinement only conditions of confinement as they relate to  
2 inadequately trained staff, and individualized treatment.

3  
4 (5.6). Plaintiff alleges Dr. Brian Judd, and Dr. Mark McClung were the primary providers in the  
5 community for treatment, and when I see Dr. Judd in the community he doesn't want me to  
6 acknowledge him, due to his not wanting to be identified in the community. Example: Plaintiff  
7 goes to treatment in Olympia, at his office, there is a coffee shop in there that is separate, in  
8 witch Plaintiff goes to get coffee. Plaintiff went down separately with an escort after my one on  
9 one session with Dr. Judd, who came in later (Dr. Judd is also a member picked by SCC by the  
10 SCTF to be on the joint forensic committee and RCTT). Plaintiff acknowledge Dr. Judd while  
11 inside the coffee shop, and he responded to Plaintiff. However, when Plaintiff got back up to his  
12 office he scolded Plaintiff saying the building does not know who I am as far as treating Sex  
13 Predators, and he does not want them to find out "therefore if Plaintiff addresses him publicly he  
14 will not respond. Plaintiff alleges this attitude resulted in a non-therapeutic environment for the  
15 Plaintiff and was cruel and unusual punishment, it further violated Due Process.

16  
17 (5.7). Plaintiff alleges during transport he is forbidden from sitting in any area of the ferry except  
18 for the hull, where there is no windows or people to talk to during the boat ride. Again, Plaintiff  
19 alleges this is cruel and unusual punishment. And that since Plaintiff is committed under RCW  
20 71.09 instead of RCW 71.05 his community alliance is scrutinized to the point of it being  
21 baseless and overburden some based on the purpose of community re-integration. Plaintiff  
22 alleges this due to Defendants Dr. Mark McClung retaining the Plaintiff under these conditions  
23 based on the diagnosis of Paranoid Schizophrenia. (Plaintiff incorporates paragraph 5.6 as  
24 though fully set forth herein.)

25  
26 (5.8). Plaintiff alleges he cannot enter into a romantic relationship without the consent of the  
27 treatment team (RCTT). However, they will not give Plaintiff a chance to engage in a consensual  
28 relationship based on the above criteria for RCW 71.09 et seq. although this statute specifically



1 refers to individualized treatment. (Plaintiff incorporates paragraphs 5.4 and 5.5 as though fully  
2 set forth herein.)

3  
4 (5.9). Plaintiff cannot go to Burger King or McDonalds due to the fact there is kids there, and  
5 playlands. Again, Plaintiff alleges this procedure is not based on individual treatment as  
6 recognized in RCW 71.09, Plaintiff realizes that the conditions of confinement must bear some  
7 reasonable purpose to which one is committed. (Plaintiff alleges though this may be true he now  
8 incorporates paragraphs 5.1, 5.4 and 5.5 as though fully set forth herein.)

9  
10 (5.10). Plaintiff alleges the SCTF uses police like procedure, referencing you cannot get out of  
11 the car until staff gets out first, and you have to sit in the back seat of a marked car everywhere  
12 you go, further they are not seeing how well you do in the community. Instead they are policing  
13 the area. Plaintiff alleges this makes reintegration impossible and is not individualized since  
14 Plaintiff treatment should be tailored around how he did at Western State Hospital on his  
15 community outings.

16  
17 (5.11). Plaintiff alleges SCTF staff members on several occasions offered their disrespect in a  
18 unofficial way by making statements to the effect "you can fuck this dick, and not only do you  
19 want my advice but my conversation too: Plaintiff alleges this is none therapeutic and cruel and  
20 unusual punishment.

21  
22 (5.12). Plaintiff alleges during his stay at the SCTF house a female staff member who had lied  
23 about her credentials propositioned Plaintiff by saying in the van coming back from the McNeil  
24 Island dock "we should fuck" I ask her to turn up the music so Plaintiff wouldn't hear her  
25 mumbled suggestions. However, when Plaintiff reported the incident to a RCTT member my  
26 female escorts were taken, and after my voluntary return to the SCC, the female staff was in fact  
27 put on administrative leave and another resident was violated pending investigation of the Staff  
28 member, having sexual relations with the resident and lying about her credentials, further,

1 changing and altering escort trips to specific locations. Plaintiff alleges his mental health  
2 diagnosis was called into question based on this reported incident without investigation and that  
3 Defendant McClung opt to boost Plaintiffs medication.

4  
5 (5.13). Plaintiff alleges he went to the Tacoma office for treatment with Dennis Gallogos, and  
6 that down the street there is a restaurant called the hal of sub., Mr. Gallogos asked Plaintiff if the  
7 food was any good and Plaintiff affirmed. After treatment with my provider and upon arriving at  
8 the dock for transport, Plaintiff began to attempt at conversation with Mr. Gallegos and I ask if  
9 the food was good and he stated "not only do you want my conversation but also my advice. Mr.  
10 Gallegos is trained by the RCTT committee.

11  
12 (5.14). Plaintiff alleges he was going home to my fathers house in Tacoma, with Mr. Hardy and  
13 we were talking and Plaintiff mentioned "we" and he stated enough of this "we" you can fuck  
14 this dick. Plaintiff alleges this was also cruel and unusual punishment, further these allegations in  
15 each and every paragraph effected Plaintiffs treatment and mental illness.

16  
17 (5.15). Plaintiff alleges he was being caught in a conspiracy by the RCTT team including Ms.  
18 Acker and Ms. Roberts who are responsible for Plaintiffs conditions of confinement. Further,  
19 both Defendants authorized Plaintiff to be involuntarily medicated by ordering it in his  
20 conditions of confinement. (DOC Preliminary Investigation), on February 11, 2005 Plaintiff had  
21 a status conference regarding my LRA status, Plaintiff typed his own affidavit and filed it with  
22 the Superior Court with Judge Ronald Culpepper. My attorney (who discusses with the RCTT  
23 team) objected and recommended that Plaintiff be violated. However, the Judge gave Plaintiff a  
24 conditions of confinement hearing in May of 2005. Plaintiff alleges a violation of Due Process.

25  
26 (5.16). Plaintiff alleges he went to treatment in Olympia, with Dr. Judd a alternative from  
27 Tacoma for group therapy as mentioned there is a coffee shop there and a lady runs it. Plaintiff  
28 has established a repiore with her, and she will acknowledge Plaintiff by his first name. After

1 treatment with Dr. Judd Plaintiff went down to the coffee shop with him after we resolved the  
2 first issue at the Court hearing.

3  
4 (5.17). Plaintiff alleges he told his escort Mr. Gallegos that he was going down to the coffee shop  
5 with Dr. Judd since he is a member of RCTT. Dr. Judd, another member and I went down to the  
6 coffee shop and upon entering there were three women already there so we stood back and  
7 waited for them to get their service, in the interim a young male came in behind Plaintiff so I  
8 moved to get out of the way and then he crowded Plaintiff again so I moved over the other way.  
9 at that time Plaintiff noticed that Mr. Gallegos was in the coffee shop observing, so I look to Dr.  
10 Judd who was blocking the entrance to go behind the coffee shop counter where the women was  
11 at, the lady asked why there was so many people in the shop at that time and a member of the  
12 group stated because Plaintiff is in crisis. When we got back to Dr. Judd's office Plaintiff  
13 confronted him about blocking the entrance and he denied the issue all the way around therefore  
14 Plaintiff became Paranoid. The SCC/SCTF has e-mailed certain individuals with the notion to  
15 transition individuals to LRA status and then violate them for a period of time and then return  
16 them back to LRA status to justify their program. This is a violation of Procedural Due Process  
17 and cruel and unusual punishment a violation of my constitutional rights committed by RCTT or  
18 where the RCTT failed to intervene.

19  
20 (5.18). Plaintiff alleges he came back to the Island on the 6:15 boat, upon arriving on the McNeil  
21 Island side, there was about (11 Department of Corrections) inmates at the dock. Plaintiff alleges  
22 when he passed them they stated "I wish a rape would look at me". Members of the RCTT team  
23 were aware of the dislike between Department of Corrections inmates/staff directed at  
24 SCC/SCTF house residents through documentation, and direct knowledge. Plaintiff got in the  
25 SCC van and noticed the DOC van there with two corrections officers inside. This incident could  
26 have resulted in the Plaintiff being jumped, SCC is aware that DOC inmates and SCC residents  
27 are to be kept separate, further they began to argue with my escort as Plaintiff was driving off in a  
28 angry tone. During this time there is never this amount of inmates at the dock.

1  
2 (5.19). Plaintiff alleges the next day he went home to his dads in Spanaway, and while standing  
3 on the back porch someone yelled "Darnell you're a predator" and when Plaintiff left the  
4 neighbor at the end of the street told Plaintiff "no your still a rapo." Defendant Keith Barnes is  
5 the individual involved with community notification. And in the past there has been citizens  
6 harassing and even murdering sex offenders in the community. Defendant Barnes even meets  
7 with the RCTT team to discuss community reintegration of SVP's back into the community.  
8 Plaintiff alleges also aside from this that Keith Barnes erroneously registered him in the past  
9 using false criminal history. Defendant Barnes and members of the RCTT team notified each and  
10 every member of the neighborhood of the Plaintiff return to that block probably with erroneous  
11 information. Plaintiff will not know the extent of the violation until discovery and depositions of  
12 all Defendants. However, the registration act as applied by Defendants is cruel and unusual  
13 punishment.  
14

15 (5.20). Plaintiff alleges he took the barge back to the island at 4:30 pm, when my escort and I  
16 reached the side of the Island a Caucasian inmate stepped in front of the van and made a sexual  
17 provocative gesture (sexual) and smiled. My escort stopped and asked if there was another barge  
18 leaving the Island, the inmate stated yea. "Watch him his life is in danger at the dock". Plaintiff  
19 alleges again the RCTT knew of the dislike of the residents by the DOC Correction Department  
20 and their inmates. As they refer to us as "Rapos" and the vehicles were transported in are called  
21 the rape mobiles. Plaintiff does not have to wait for violence to erupt before he files a  
22 constitutional claim of cruel and unusual punishment against Defendants. The members of the  
23 RCTT are responsible for Plaintiff care and treatment.  
24

25 (5.21). Plaintiff alleges during his stay at the SCTF Dr. Mark McClung visited Plaintiff one time  
26 and never attended any RCTT meetings hosted by the Department of Corrections. Also,  
27 Defendant McClung caused a near fatal hazard to the Plaintiff by switching Plaintiff to at various  
28 times several different atypical anti-psychotic medications. The cause of this was that Plaintiff

1 suffered from mild heart palpitations, and was speed boated off McNeil Island to a nearby  
2 hospital for possible treatment. Defendant McClung knew or should of know that Plaintiff was  
3 developing neuroleptic malignant syndrome a rare but deadly side affect of atypical medications,  
4 and cardiac dysfunction is one of the symptoms along with fever. Instead, Dr. McClung wrote a  
5 letter stating that my symptoms indicted SLEEP APNEA. Plaintiff alleges medical negligence on  
6 the part of Dr. McClung.

7  
8  
9  
10 (5.22). Plaintiff alleges as a result of this build-up he had a decompensation (emotional  
11 breakdown) earlier that morning and decided to return to the SCC, Plaintiff discussed this with  
12 my attorney and a member of the RCTT the object of return to the SCC, we however, decided  
13 Plaintiff should stay out their at the SCTF, via contract, in the interim Plaintiff was discussing  
14 with Mary Bond the circumstances of my commitment and a inmate up in the recycling shed  
15 (belonging to Department of Correction) stated "your not going anywhere with little white"  
16 Plaintiff doesn't know what he was taking about, but the interference by Department of  
17 Corrections failure to supervise there inmates contributed to Plaintiffs return. Plaintiff alleges  
18 this resulted in cruel and unusual punishment.

19  
20 (5.23). Plaintiff alleges he took a week off then decided to return to the SCC voluntarily on  
21 March 11, 2005, after one last trip into the community. Several days later Plaintiff was moved to  
22 Redwood after placement in Cedar, and everything was quiet, until the second night Plaintiff was  
23 there somebody from the administration side of Redwood yelled "shut up snitch" I'm sure it was  
24 a DOC inmate. However, it was possibly the same inmate from the barge, and this was the last  
25 part of his delusion, and Plaintiff felt that there was a different plot to the objective as a whole.  
26 Which is one of the reasons Plaintiff returned to the SCC. Plaintiff alleges he is uncertain just  
27 who made the allegation but is sure it stemmed from his complaint about the SCTF. Plaintiff  
28 alleges cruel and unusual punishment at the hands of the RCTT

1  
2 (5.24). Plaintiff alleges the next day Plaintiff was outside around eight in the morning by the  
3 weights when a DOC inmate came by driving a SCC vehicle and yelled I decided your not the  
4 only rapo I want. Associate Superintendent Rick Ramseth and Kevin Trotter (both have been  
5 removed since the incident for criminal activity that is not associated with this incident) were by  
6 the security building and could over hear the inmate. Nothing was done to my knowledge. The  
7 inmate was in a SCC vehicle (the blue truck).

8  
9  
10 (5.25). Plaintiff alleges here on the SCC compound where Department of Correction has used  
11 minimum custody inmates to do minor chores inside the Total Confinement facility of SCC they  
12 communicate with the SCC residents and Plaintiff believes this is all designed to help Plaintiff  
13 get into some trouble where he loses his phase status. Plaintiff alleges DOC inmates frequent this  
14 compound and appear to get along with other residents just fine. The influence of the activity is  
15 focused on Plaintiff. Plaintiff alleges on his way to breakfast he was yelled at from the supply  
16 building behind this facility by a DOC inmate, who said "don't even look up here tree jumper",  
17 even though I was looking at Dogwood another living unit. SCC security Andrea Brown was  
18 present and no action was taken.

19  
20 (5.26) Plaintiff alleges he came back to the SCC from the SCTF house voluntary due to the  
21 allegations brought about in this complaint, the emotional breakdown and negative influences at  
22 the SCTF house. Plaintiff alleges he retained his level 5 and phase 6 status, it was readily  
23 apparent that residents and staff wanted Plaintiffs custody took and to be treated involuntarily  
24 psychiatrically . Plaintiff alleges that per Washington v. Harper this could have been a violation  
25 of Due Process, and Cruel and Unusual Punishment, and that the problem could arise again in the  
26 future due to the presence of corrupt staff, smuggling pornography, hard grain alcohol, and street  
27 drugs into the facility. Which makes the treatment inadequate and trust and repiore obsolete.

1 (5.27). Plaintiff alleges residents and staff of Redwood were saying cruel and unusual things, and  
2 making sexual remarks, Plaintiff alleges this was also part of the sensory deprivation done to  
3 promote a suicide attempt or decomp the Plaintiff to the point Defendant Dr. Leslie Sziebert  
4 could get a win under policy 862 for involuntary medication. Plaintiff alleges cruel and unusual  
5 punishment. As spelled out later in the complaint Plaintiff did prevail at the hearing that did take  
6 place, however, is still continued on narcoleptics as a condition of living in minimum housing,  
7 however the atyicals.

8  
9 (5.28). Plaintiff alleges he was a low management resident, and still retaining level five and  
10 phase six status, however, the head of the security team and clinical on advice of Dr. Sziebet and  
11 Dr. McClung both Defendants (Dr. Leslie Sziebert is not a member of the RCTT) moved the  
12 Plaintiff to a "high management, none treatment, special need unit while admittedly not alleging  
13 any behavior problem whatsoever. Plaintiff was placed in a segregation type cell housing "wet  
14 cell" toilet inside. Plaintiff alleges he was being provoked so that the clinical staff have a reason  
15 to demote Plaintiff in phase status and level. Plaintiff alleges there was sexual content coming  
16 from Plaintiff asserts the vent above my housing cell. Plaintiff alleges this is designed to give  
17 Plaintiff an erection, sexual dysfunction, or cause masturbation. Plaintiff alleges cruel and  
18 unusual punishment, and due process violations.

19  
20 (5.29). On April 13, 2005, Plaintiff was served a involuntary medication notice by RRC John  
21 Lewis, and Al Nerio, it was written by Dr. Leslie Sziebert, stating Plaintiff was a chronic  
22 schizophrenic and suggesting a medication previously referred to Zyprexa. Defendant Sziebert  
23 was indicated that Plaintiff had not taken medication since 3.17.2005 among other things.  
24 Defendant Sziebert also noted potential side effects namely: Weight Gain, Metabolic Syndrome,  
25 Tardive dyskinesia . Plaintiff alleges he has already discussed an experienced these symptoms  
26 and Defendants Sziebert and McClung were aware. Plaintiff did win the involuntary medication  
27 hearing based on competence and the dangerousness prong of policy 862. Plaintiff alleges  
28

1 continuous harassment by members of clinical, security and Defendants through the form of  
2 sensory deprivation.

3  
4 (5.30). Plaintiff alleges present at the involuntary medication hearing were Plaintiff head counsel  
5 F. McNamara Jardine, Dr. Bruce Gage (Western State Hospital), Al McGlaughlin, head of  
6 treatment and care, Mark Seli, psychologist, Becky Denny, legal coordinator, Dr. Leslie Sziebert,  
7 psychiatrist and RRC 3's along with Dr. Richard Stokes, psychologist. Plaintiff's attorney asked  
8 three questions regarding Plaintiffs health: (1). Has the client acted out since his return to SCC,  
9 Defendants answered "NO" (2). Has the client met criteria for grave disability at this time,  
10 Defendants namely Dr. Sziebert answered "NO" and has he tried to harm himself or others since  
11 his return, Defendants answered "NO". Plaintiff alleges Dr. Stokes question posed to Dr.  
12 Sziebert was he answers the question surrounding his claims which is how long does it take to  
13 decompensate, Dr. Sziebert answered within three years or sooner. Plaintiff alleges Dr. Sziebert  
14 was and is currently using sensory deprivation to decompensate Plaintiff. Plaintiff alleges this is  
15 cruel and unusual punishment, and a violation of Due Process.

16  
17 (5.31). Plaintiff alleges further that since he has been hear he has filed grievances against staff,  
18 abuse complaints against staff and residents which are acknowledged but nothing is done, these  
19 incident reports date back to July 20, 2005, where Defendant Henry Richards (a member of the  
20 RCTT) expressed concern regarding the Gay Coalition and how it distressed Plaintiff and that he  
21 felt that individuals were behaving inappropriately toward Plaintiff. Plaintiff was made sure his  
22 complaints were taken very seriously and that there was an attempt to resolve them. Plaintiff  
23 alleges deliberate indifference and failure to keep Plaintiff safe from harm based on gender  
24 conflicts and (treatment orientation).

25  
26 (5.32). Plaintiff alleges he filed another letter of abuse (racial animus) directed toward him by  
27 staff/residents. Plaintiff alleges that Ms. Cathi Harris responded to the complaint by stating they  
28 are aware residents may be using inappropriate language toward the Plaintiff but since it is not



1 staff it does not constitute staff abuse per SCC policy. Plaintiff alleges not only do staff call him  
2 inappropriate names they preach supremacy inadvertently here at the SCC, and they fail to  
3 protect against resident on resident abuse. Plaintiff alleges this is sensory deprivation, non-  
4 therapeutic, cruel and unusual punishment. Plaintiff further alleges that Dr. Henry Richards has  
5 and/or had direct knowledge this is taking place through direct knowledge or through  
6 administrative avenues.

7  
8 (5.33). Plaintiff alleges that on 1.28.08 while living in Redwood where he has been place for  
9 being medication compliant, he was accused of spitting on a Caucasians resident while in the  
10 dining facility. Plaintiff was issued a Treatment Plan Addendum (TPA) stating: Mr. McGary was  
11 witnessed by other residents in the dining facility that he spit on resident 490298. Plaintiff  
12 alleges he was restricted to the unit until further notice and investigation. Plaintiff alleges at the  
13 conclusion of the investigation it was found out that the residents involved had rehearsed the  
14 incidents and went to security staff and told them in sequence that Plaintiff was off his  
15 medication and that there was no evidence that Plaintiff had spit on the resident. Plaintiff alleges  
16 this was all done to cover that fact that SR was calling Plaintiff racially discriminative names  
17 such as "NIGGER". Plaintiff alleges he lost three days pay from maintenance for the alleged  
18 incident, and that since staff failed to act sooner an prevent the racial atmosphere on the  
19 compound (resident conspiracy to discriminate) they were deliberately indifferent to Plaintiffs  
20 care and treatment. Plaintiff alleges none of the residents were punished for the incident and that  
21 SR's petition was dismissed.

22  
23 (5.34). Plaintiff alleges all members of the (Community Correction Office, Ms. Victoria  
24 Roberts(My referral Agent), Ms. Kim Acker, Dr. Brian Judd, Mr. Dennis Pickett, and the End of  
25 Sentence Review Committee. Have violated my constitutional rights by violating due process  
26 standards, and being cruel and unusual in what would amount to the form of punishment.  
27 Plaintiff alleges he had no community placement, no community supervision and further only  
28 one year of probation for these offenses. Plaintiff alleges Department of Corrections should have

1 no role in caring for the Plaintiff or supervising him after his release. (This is not barred by heck  
2 due to the fact Plaintiffs sentence was invalidated in 1998, however, DOC supervision is  
3 continuous. Plaintiff alleges the RCTT team issues DOC 07-023 (Registration Notification),  
4 DOC 07-024 (Conditions, Requirements, and Instructions).

5  
6 (5.35). Plaintiff alleges Defendant Steve Gregorich or PIERCE COUNTY PROSECUTORS  
7 OFFICE is possibly not a member of the RCTT team, however, Plaintiff alleges that two  
8 members of the Department of Corrections Defendants Ms. Acker and Ms. Roberts were  
9 responsible for Plaintiffs referral by review criteria and requesting a formal evaluation  
10 compounding the information and supplying it to Defendant Steve Gregorich for determination  
11 of SVP status.

12  
13 (5.36). Plaintiff alleges paragraph 5.35 (with the same force and effect as though set forth herein)  
14 that Defendant Steve Gregorich acted as a witness in attesting to the End of Sentence Review  
15 Committee's findings, without a independent psychologist to affirm the current diagnosis, and  
16 fabricated the criminal history distinct from the pre-sentence investigation. Plaintiff further  
17 alleges Defendant Steve Gregorich acts are continuous in nature by constantly condoning and  
18 being involved in the annual review process that has other defendants input, and in accordance  
19 with policy DOC 380.370(4)(d)(1)(2)(3), and (4). Plaintiff alleges based on the RCTT  
20 committees findings he was committed to the Department of Social and Health Services and  
21 therefore is still a Department of Corrections inmate, and this violates due process.

## 22 23 **VI. FACTUAL BASIS**

24  
25 (6.1). The United States Supreme Court has condoned the use of Civil Commitment statutes as  
26 authorization to contain a small but dangerous group of perpetrators commonly known for their  
27 recidivism. Kansas v. Hendricks, 521 US \_\_\_ 138 L.Ed 2d 501, 117 S. Ct. (1997); according to  
28 the court the Acts currently do not establish criminal proceedings, and involuntary confinement

1 under it is not punishment. The categorization of a particular proceeding as civil or criminal is a  
2 question of statutory construction. Allen v. Illinois, 478 US 364, 368, 92 L.Ed 2d 296, 106, S. Ct  
3 at 2988; nothing on the face of the Act suggest that the Kansas legislature sought to create  
4 anything other than a civil commitment scheme. That manifest intent will be rejected only if  
5 Hendricks provides the clearest proof that the scheme is so punitive in purpose or effect as to  
6 negate Kansas intention to deem it civil. United States v. Ward, 448 US, 242, 248-49, 65 L.Ed 2d  
7 742, 100 S. Ct. 2636, in the State of Kansas this heavy burden could not be established or the  
8 legislative intent had not been established. However, in the founding State of Washington the  
9 Statute tormented and severely caused suffering and irreparable harm amongst it's detainees.  
10 Though Washington and Kansas may have similar statutes the challenges have arrived at  
11 somewhat different conclusions when facing constitutional challenges. In 1994, Petitioner Young  
12 filed a writ of habeas corpus pursuant to 28 U.S.C 2254 against the SCC, challenging the  
13 constitutionality of the Act and claiming his confinement was illegal. The District court granted  
14 the writ and found that the Act violated substantive due process, that the Act was punitive, and  
15 that it violated the double jeopardy and ex post facto provisions of the constitution. Young v.  
16 Weston, 898 F. Supp. 744 (W.D. Wash. 1995) (Young I); the SCC appealed to the Ninth Circuit.  
17 While the appeal was pending, the Supreme Court held in Kansas v. Hendricks, that the Kansas  
18 Sexually Violent Predator Act facially met the requirements of substantive due process, was non-  
19 punitive, and therefore did not violate the double jeopardy and ex post facto provisions of the  
20 constitutions. It seems that the Supreme Court issued its ruling in Hendricks in bad faith or  
21 without viewing all the pertinent facts and requirements for the statute to be non-punitive and  
22 free of the non-punitive stigma which give rise to the double jeopardy clause. For over a decade  
23 the SCC operated under Federal oversight as a result of injunctions issued by the United States  
24 District Court in Seattle. In 1991 only a year after SCC had opened the court found conditions of  
25 confinement unconstitutional and found mental health treatment offered inadequate. Turay v.  
26 Seling, C91-0664RSM. Today the courts have gave up on the injunction since the passing of  
27 Honorable Judge Dwyer, but have said there "is no right answer and no good fix for the  
28 program". The program has again deteriorated and is unconstitutional and suffers from some or

1 most of the defects that haunt Coalinga in the California facility. See Hydrick v. Hunter, 500  
2 F.3d 978 (C.A.9 (Cal.) 2007)

3 (6.2). Of further concern is what is the prosecutors role in advocating for the End of Sentence  
4 Review committee. In Fletcher v. Kalina, the court recognized in determining immunity, we  
5 must accept the Plaintiffs allegations as true. See Buckley v. Fitzsimmons, 509 US 259, 261, 113  
6 S. Ct. 2606, 125 L.Ed.2d 209 (1993). Lynne Kalina, a deputy prosecutor, was assigned to work  
7 on a case involving alleged theft of computer equipment form a private school in Seattle. She  
8 prepared an application for an arrest warrant and an information charging Rodney Fletcher with  
9 second degree burglary. The warrant application was accompanied by a "Certification for  
10 Determination of Probable Cause," a sworn declaration describing the results of the police  
11 investigation. Based on this document, which she signed, the court issued an arrest warrant for  
12 Fletcher. The burglary charge was eventually dismissed when Fletcher's attorney discovered  
13 inaccuracies in the Certification. *Id.* 93 F.3d 653 (C.A.9).

14  
15 (6.3). Plaintiff argues in this civil rights complaint that the prosecutor performed the same action  
16 as did Kalina and in this instance he acted as a witness and not a prosecutor when fabricating  
17 evidence, and rubber stamping the evaluation done by the Department of Correction in a sworn  
18 declaration prepared for securing an arrest warrant. In Burns v. Reed the court explicitly held  
19 that when prosecutors perform administrative or investigative, rather than advocacy, functions  
20 they do not receive absolute immunity. *Id.* 500 U.S 478, 494-96, 111 S. Ct. 1934, 1943-45, 114  
21 L.Ed.2d (1991); the function performed in this case was as a witness and therefore absolute  
22 immunity should not apply. Further, the Deputy has other involvement with the End of Sentence  
23 Review Committee, and is continuously involved with the RCTT team, and had first hand  
24 knowledge of the conditions of confinement Plaintiff was being subject to and is also therefore  
25 liable. Price v. Moody, 677 F. 2d 676 (1982).

26  
27 (6.4). Plaintiff argues as with DOC's policy in place at the Special Offender Center, the SCC  
28 policy creates a liberty interest in Defendants summoning for involuntary treatment while the

1 patient is at the (SCTF). The SOC involuntary medication policy defines "gravely disabled and  
2 "presents a likelihood of serious harm to himself or others" identically to the statutory definitions  
3 used in RCW 71.05, the involuntary commitment statute. The SCC policy 862 may have  
4 created a protected liberty interest in itself. Roberts v. Spalding, 783 F.2d 867, 870 (9<sup>th</sup> Cir.  
5 1986). In a similar case to Vitek v. Jones, we held on equal protection grounds that a prisoner  
6 was entitled to a judicial hearing before separately administered mental health facility, to be  
7 given psychiatric treatment that included ant psychotic drugs. Harmon v. McNutt, 91 Wn.2d 126,  
8 587 P.2d 537 (1978); See also United States of America v. Williams, 356 F.3d 1045 (CA.9(Or)  
9 2004). Plaintiff rest his complaint on these facts as to the fact that the medications that are or  
10 were taken by Plaintiff cause severe and permanent side-effects. And that SCC policy is  
11 unconstitutional per Washington v. Harper.

## 12 13 **VII. DECLARATORY AND INJUNCTIVE RELIEF**

14 (7.1). This court has authority to grant relief pursuant to 28 U.S.C Sec. 2201, as an actual  
15 controversy exists regarding the rights, privileges, immunities to which the Plaintiff is entitled  
16 while previously detained and currently detained in the care, custody, and control of Department  
17 of Social and Health Services and Department of Corrections authorities and Defendants.

18  
19 (7.2). Moreover, pursuant to 28 U.S.C Sec. 2202, this court has authority to grant injunctive and  
20 other necessary and proper relief.

## 21 22 **VIII. PRAYER FOR RELIEF**

23 **WHEREFORE THIS COURT SHOULD**, provide the following relief to Plaintiff:

24 (8.1). Declaratory judgment that Defendants have violated the constitutional rights, protections  
25 and guarantees of Plaintiff under the United States Constitution:

26  
27 (8.2). Injunctive Relief ordering Defendants to cease violating the laws and Constitution of the  
28 United States as it pertains to Plaintiff and those similarly situated at SCFT/SCC:

1  
2 (8.3). Compensatory damages, for Plaintiff for damages and injustices suffered:  
3

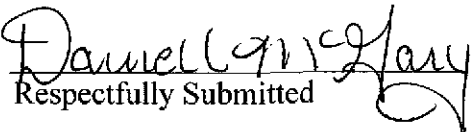
4 (8.5). For such just and equitable relief as appropriate to correct the wrong[s] done Plaintiff:  
5  
6

7 and  
8

9 (8.6). For such other and different relief the court deems just and appropriate.  
10

11 I, Darnell McGary, the below signed, swear under penalty of perjury the foregoing document is  
12 true and correct to the best of my knowledge, and is sworn to in accordance with 28 U.S.C 1746  
13

14  
15 DATED this 14<sup>th</sup> day of May 2009  
16

  
Respectfully Submitted